



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

CHB

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 14, 2012

By ECF

The Honorable Kiyo A. Matsumoto
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Kissone Frederick
Criminal Docket No. 09-258 (KAM)

Dear Judge Matsumoto:

The government writes in response to the defendant's June 13, 2012 letter. The Court correctly observed in its recent order that a seven-year sentence on Count Three was appropriate because Frederick did not simply use the firearm during the attempted robbery of the cell phone store but affirmatively "display[ed] all ... of the firearm, ... in order to intimidate" the store's employee. 18 U.S.C. § 924(c)(4); see June 5, 2012 Order at 7; see also June 4, 2010 Order on First Rule 33 Motion at 6 (discussing evidence of brandishing at trial); Trial Testimony of Kersha Ellis at 134 ("Q: Was there anything in particular about the fact that the individual took the gun out on the street that gave you concern? A: I was like he's crazy, he's coming to get me so I went -- I went running."); Dean v. United States, 556 U.S. 568, 572-73 (2009) (discussing brandishing); Harris v. United States, 536 U.S. 545, 552-569 (2002) (holding that brandishing is sentencing factor to be found by court).

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: _____ /s/
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cc: Joyce London, Esq. (by email)